

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

TRANSCRIPT CASE MANAGEMENT MOTION
BEFORE THE HONORABLE JAMES L. GARRITY
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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(Appearances Continued)

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1 (Proceedings commence at 2:36 p.m.)

2 THE COURT: China Fishery Group. Can I get
3 appearances, please?

4 MR. KLEINBERG: Good afternoon, Your Honor. Howard
5 Kleinberg, Meyer Souzzi, counsel for the debtor, along with my
6 partner Edward LoBello.

7 THE COURT: All right.

8 MR. MARTIN: Good afternoon, Your Honor. Craig Martin
9 and John Lyons from DLA Piper, LLP (US). We appear on behalf
10 of certain of the club lender parties, Bravo Bank, DBS,
11 Standard Charter, Ascetic China (phonetic).

12 THE COURT: All right. Anyone else want to appear?

13 MR. HYMAN: Good morning, Your Honor [sic]. Rick
14 Hyman from Mayer Brown on behalf of Maybank.

15 THE COURT: All right.

16 MR. PESCE: Good afternoon, Your Honor. Gregory
17 Pesce, Kirkland & Ellis, on behalf of the Ad Hoc Committee of
18 Senior Noteholders.

19 THE COURT: All right.

20 MS. ATTANASIO: Lee Attanasio, with my colleague
21 Andrew Propps, on behalf of -- of Sidley Austin, on behalf of
22 Bank of America.

23 THE COURT: Okay.

24 MR. LUSKIN: Your Honor, Michael Luskin, Luskin, Stern
25 & Eisler, for Rabo Bank, as agent on the club loan.

1 THE COURT: All right. Mr. Kleinberg.

2 MR. KLEINBERG: Yes. Thank you, Your Honor.

3 So this is a status conference that was requested by
4 the lenders during the first-day hearings, held on July 11th,
5 last Monday, before Your Honor. If I may briefly report on
6 what's transpired since then.

7 Following the Monday first-day hearing, we did
8 schedule a meeting with a large number of bank participants and
9 their attorneys, as well as the senior noteholders and their
10 attorneys; the meeting was held on Thursday afternoon, and Mr.
11 Prager's office, who's with Goldin Associates, who's here in
12 court today, as well, and you know, half a dozen or so core
13 issues were discussed.

14 And on Friday, where noted in an email exchange
15 between our group and Mr. Lyons, who was the point person for
16 the lender group. Emails were exchanged on Saturday. We had a
17 conference call under which the Peruvian operating company's
18 counsel, who did, in fact, appear before Your Honor the prior
19 Monday, was presented to the lenders and their Peruvian
20 counsel, for an exchange of information and legal positions
21 regarding the Peruvian bankruptcies. And both Sunday, we
22 exchanged further emails, and this morning, further emails.
23 And finally, we did speak with the lender groups in the
24 conference room that Your Honor provided, graciously, in the
25 hallway, a few moments ago.

1 I believe that we were in the process of making some
2 progress on a number of the issues. But there is one issue
3 that came up that, apparently, is a stop point for the lenders.
4 And unfortunately, we did break up the meeting, and are not, in
5 our view, perhaps in the lenders' view, as well, really able to
6 continue the negotiations any further.

7 I know the lenders are actually to address with Your
8 Honor their desire to immediately file and prosecute motions.

9 THE COURT: Well, can I ask what the issue is, or is
10 that something that is better left unspoken on the record?

11 MR. MARTIN: I'm happy to address it. I hesitate to
12 do so without --

13 MR. KLEINBERG: I'm happy to discuss the proposal, as
14 well.

15 THE COURT: I mean, are we talking -- are we at a
16 point where, if we get this issue resolved, do we have a basis
17 for sort of trying to move this forward in a cooperative way,
18 or is it really just, you know, the damage has been done? And
19 look, I appreciate there's a long history here that predates my
20 involvement in this. I just need -- I just want to get a sense
21 for it before we start talking about, you know, motions to
22 appoint trustees and all of that sort of thing.

23 MR. MARTIN: The sense is, is that we have an issue
24 that's very critical, and it has to do with pending foreign
25 insolvency proceedings.

1 We believe, and we've modified some of our proposal
2 to, in fact, address specifically input from the debtor's
3 Peruvian counsel. As Mr. Kleinberg indicated, we had a call on
4 Saturday, our counsel, their counsel; we listened to them. But
5 under Peruvian law, we have taken advice of counsel, and we
6 understand that, once there is publication notice of the
7 proceedings in the Gazette, by the organization that you heard
8 referred to last time as "Indecopi" --

9 THE COURT: Right.

10 MR. MARTIN: -- then the proceeding is somewhat fixed.

11 So one of the reasons why we're in such a hurry-up
12 standpoint is, if we can't have that -- those Peruvian
13 proceedings addressed in a way that satisfies us through
14 withdrawal or some other form of agreement, we need to move
15 quickly, and I have a plan for how we might be able to do that.
16 But that's the core issue, from our clients' standpoint, is,
17 once we cross that line, we feel like there's no coming back.

18 THE COURT: And do we know when that's going to happen

19 --

20 MR. MARTIN: We know --

21 THE COURT: -- or is your --

22 MR. MARTIN: We know from the statute that it is to
23 happen within 30 days of -- roughly 30 days of the filing
24 having been submitted, which was on June 30th.

25 MR. KLEINBERG: By the way, I'm sorry to interrupt,

1 but that's not our understanding. Correct?

2 MR. LOBELLO: Yeah, Your Honor, I don't know that we
3 agree on that. I thought that, unless we're missing each other
4 -- you know, we all have Peruvian counsel. But from my --
5 first of all, I don't understand why there's no turning back at
6 that point. But putting that aside, I think it's three to four
7 months in, and I -- and what I heard counsel say was maybe 30
8 days in. So I'm -- we're missing each other on that point.

9 MR. MARTIN: Well, I was interrupted, Your Honor. I
10 was going to say --

11 THE COURT: Yes.

12 MR. MARTIN: -- that the statute says it's 30 days,
13 and then there's a publication, I think the first Monday, some
14 point thereafter.

15 We further understand that, even though they can
16 publish firstly within 30 days, they might take a week, two
17 weeks. We haven't exactly figured out the exact time frame in
18 which that publication will occur, which, as you can imagine,
19 makes us nervous because, when we read the statute, it could be
20 as early as a few weeks from now; although it's possible that
21 the debtor's counsel is correct, and it -- you know, it's more
22 like 45 days. But that's still not far away from where we sit
23 now.

24 THE COURT: All right. And the concern that the --
25 your group has, your extended group has, is that, once that

1 gets published, it can't be withdrawn or dismissed?

2 MR. MARTIN: We have not yet taken advice that it can
3 be withdrawn.

4 THE COURT: Right.

5 MR. MARTIN: We understand that, once that happens,
6 there then begins the time frame to submit what's called a
7 "restructuring plan." And while there is what's called an
8 "equity restructuring" possible under Peruvian law, if it's not
9 done within certain time frames, then the only other option is
10 liquidation.

11 Also, from the filing of that Gazette notice, there
12 are then complicated procedures regarding filing claims, having
13 those claims fixed, powers of attorneys that our clients would
14 have to submit, creditors board meetings that have to take
15 place. From our analysis of the law, there are very
16 complicated things that occur, which permit a restructuring
17 that we believe would be inconsistent with U.S. law.

18 THE COURT: All right.

19 MR. KLEINBERG: Your Honor, we've offered to the
20 lenders, just this morning, further access to both Peruvian
21 counsel and Peruvian management, to help clarify some of these
22 issues, and they took that for what it's worth, at face value.
23 But it was not enough, apparently, to dissuade them from their
24 litigious course of conduct which they wish to pursue.

25 We've also offered them -- so the core issue -- I

1 mean, the cat is out of the bag. The core issue is the lenders
2 have demanded that the Peruvian operating companies, which are
3 not the Chapter 11 debtors --

4 THE COURT: Right.

5 MR. KLEINBERG: -- but are the --

6 THE COURT: Chapter 15.

7 MR. KLEINBERG: -- Chapter 15 debtors --

8 THE COURT: Right.

9 MR. KLEINBERG: -- that the management of those
10 companies act to immediately dismiss the Peruvian insolvency
11 proceedings and --

12 THE COURT: Right. Well, they want to reinstitute the
13 sale process.

14 MR. KLEINBERG: Well, I don't think that -- that there
15 necessarily is a correspondence between the two of them. The
16 lenders have their own reasons -- I won't speak for them -- as
17 to why they want the Peruvian proceeding dismissed.

18 But a sale process or a restructuring process, with,
19 say, a refinancing, is, in our view, a viable option to go
20 forward, with the Peruvian proceeding remaining in place. So,
21 frankly, we don't understand why that's a hot button for them.
22 I guess, to be fair, they don't understand why we need -- the
23 Peruvian companies feel they need the protections of that
24 proceeding. But unfortunately, the talks broke down rather
25 quickly at that philosophical, if you will, impasse.

1 THE COURT: All right. Have you done -- I didn't -- I
2 haven't seen it. But have you circulated a cash management
3 order yet?

4 MR. KLEINBERG: Yes, we circulated a management order
5 on Wednesday to the lender group; we received comments from one
6 counsel on the proposed order. The motion itself was filed
7 this past Friday, with a generous hearing date set for August
8 18th, and we continue to collect comments.

9 And certainly, cash management reporting, the
10 implementation of another level of restructuring officer
11 supervision for the debtors, those are all part and parcel of
12 the discussions that we've had with the lender group, and which
13 I feel that we were potentially, if not actually, making some
14 progress on. But this Peruvian governance question and
15 insolvency question is where we stopped.

16 THE COURT: All right. So, Mr. Martin, what is your
17 ask?

18 MR. MARTIN: So, Your Honor, obviously, our goal in
19 negotiating with the debtor was to try to simplify the case by
20 getting rid of some of the multiple proceedings. And in so
21 doing, we believe, while there are still some details to be
22 discussed, we could deliver forbearance and liquidity that
23 would solve some of the issues that have been identified.

24 But to the extent that we are at an impasse -- and
25 we're willing to, perhaps, continue talking for a day or two.

1 But our clients have told us, rather firmly, that they want us
2 to move forward with the trustee motion. So I've been trying
3 to balance how do we, perhaps, continue a dialogue, make the
4 Court happy, but also keep the dates moving forward. And so
5 what I've come up with is the following:

6 We would, at the point in time, most likely within the
7 next two to three days, file a motion for a trustee. But we
8 wouldn't agree to a date by which that had to be filed; so
9 that, if we wanted to wait through the weekend, if things or
10 discussions change, we could. But if not, and we filed it, we
11 would then ask that the debtor respond within one week, natural
12 days, one business week. We would then be prepared to reply
13 within two business days. And we would request that the Court,
14 thereafter, have a hearing as promptly as possible.

15 However, we recognize that trustee hearings are
16 oftentimes long and factually intensive, especially when the
17 parties are seeking appointment of a trustee for cause. So we
18 would actually propose that we bifurcate the hearing on the
19 trustee motion, where we take up 1104(a)(2) issues first, the
20 best interest of creditors.

21 And as I think Your Honor appreciates, the creditors
22 on this side of the table are roughly a billion dollars. And
23 while we are different levels of the capital structure, both
24 with Chapter 11 debtors, Chapter 15 debtors, and some non-
25 debtors, and there might be some difference in tactics, the

1 creditors of these estates are almost uniform in their desire
2 to have some type of transparency and oversight put in place.

3 THE COURT: So let me ask you something. So you get a
4 trustee. How does that impact the Peruvian proceedings?

5 MR. MARTIN: Firstly, Your Honor, it brings the type
6 of transparency; such that, if someone is telling us they need
7 to stay in place, and they should remain in Peru, that we have
8 some confidence in that.

9 But secondly, it allows the China Fishery Group
10 entities in the corporate structure, where we believe the
11 trustee could take necessary actions to dismiss the Peruvian
12 case, and if it makes sense, work with local management to
13 pursue the sale; and if not, using the share holdings of the
14 Chapter 11 debtors, effect the necessary change to bring the
15 sale process forward.

16 Obviously, it's quite complex, and I'm not here to
17 tell the Court that I've --

18 THE COURT: You basically --

19 MR. MARTIN: -- sorted out all the answers --

20 THE COURT: You're basically saying that, because you
21 represent -- your group represents virtually all the debt in
22 the case -- is that what you're saying -- that, therefore, you
23 should be able to get a representative in place, who's going to
24 do what the folks -- what you wanted done prepetition?

25 MR. MARTIN: Yeah. And it's not just that we

1 represent all the debt because that, probably alone, would be
2 insufficient.

3 There was a -- there was a December 28th undertaking
4 that my client signed, where CROs and accounting oversight was
5 offered voluntarily, by these debtor's affiliates, and where a
6 sale time frame was agreed to. Another creditor, HSBC,
7 dismissed court proceedings, under a deed of undertaking in the
8 Cayman Islands and in Hong Kong, to have accounting oversight,
9 a forensic accountant was appointed; to have a CRO put in
10 place; and to pursue a sale time frame.

11 So our creditors feel like another factor for this
12 Court to consider is the fact that this debtor has,
13 essentially, violated two court-approved deeds of undertakings
14 for the purposes of delaying the very voluntary relief that
15 they afforded, to allow these assets to be sold to pay off
16 these creditors.

17 And we believe that that exercise, to delay payment to
18 its creditors, for what we fear might be six, nine, twelve
19 months, when everyone acknowledges that the value is in the
20 Peruvian business, that there either sufficient or we're
21 prepared to provide sufficient liquidity to make sure local
22 creditors are paid on time and kept current; and essentially,
23 what we need is an independent voice, with an independent
24 investment banker to run a sale process.

25 And we think that the relief that we've requested,

1 while we understand that there are some differences in the
2 legal points, you know, seeking the appointment of a CRO --

3 THE COURT: Okay.

4 MR. MARTIN: -- for holding companies that have
5 \$300,000 in cash on the date of filing, to run a sale process,
6 to pay off creditors under a Chapter 11 process, is relatively
7 straightforward, standard relief. And we feel that, if we're
8 at an impasse, absent an independent voice to assess things,
9 we're going to be stuck in a process that delays our clients
10 another eight, nine, twelve months.

11 And while all of us at this table are new to this, and
12 everyone on this side of the room is new to this, there are
13 people in Hong Kong that we got on the phone with that have
14 been dealing with this for ten months. And I assure you, they
15 are quite angry, and they feel quite aggrieved by these
16 proceedings.

17 And so we would like to bring that all to the Court on
18 the expedited basis, to give the Court the opportunity to see
19 if the extraordinary remedy is appropriate in these
20 circumstances, and we submit that it is. And the reason we
21 propose to bifurcate it is so that, you know, the 1104(a)(1)
22 cause for fraud, mismanagement, incompetence, et cetera, if we
23 can get the 1104(a)(2) best interests of creditors issue in
24 front of the Court, we think that's a much faster, maybe even a
25 half-a-day-type hearing; whereas, the (a)(1) hearing is

1 probably months of discovery. And we fear that going the
2 1104(a)(1) route is, you know, a three-to-six-month-type
3 process. Indecopi, in the meantime, enters its -- publishes
4 its statement in the Gazette, and we're out of time.

5 So, Your Honor, that's -- you know, as I said, I'm
6 trying to balance our clients and multiple lenders in the
7 capital structure with input we've had from the debtors and
8 with the Court's schedule and the case law on this -- sorry,
9 Your Honor, my colleague is writing me a note -- and that we
10 could bring that in front of the Court, to seek to try to
11 simplify these proceedings, and ensure that the Peruvian
12 business continues to operate. And with the limited creditors
13 down there, and the fact that, as we understand it, this case
14 isn't really about protecting local Peruvian creditors; it's
15 about how this debt, sitting on this side of the table, is
16 going to be down there.

17 So that's the proposal that we have for the Court
18 today.

19 THE COURT: So now, let's assume for a moment there is
20 a trustee appointed. And he or she, what, then dismiss --
21 what, then seeks to dismiss the Peruvian proceedings?

22 MR. MARTIN: Your Honor, as we understand it, under
23 Peruvian law, a trustee -- the Peruvian companies can make
24 available to the creditors the funds to pay off their debt. If
25 you recall, there was, I think it was around a million dollars

1 for all three debtors, just local trade debt that wasn't paid.
2 The Peruvian law actually provides that the debtor can tender
3 money to them before that Gazette publication, and that would
4 dismiss the case, if the creditors accept it. If they don't,
5 then their refusal to accept is one of the factors that
6 Indecopi takes into consideration before it publishes in the
7 Gazette.

8 So our hope would be that it -- with a trustee, we
9 could negotiate with the trustee for liquidity to fund the
10 cases, ensure that the Peruvian business has the liquidity it
11 needs, which would also include offering to pay those Peruvian
12 creditors, so that the case could be dismissed. It's a
13 legitimate process under Peruvian law, to pay off those
14 involuntary creditors.

15 But as Your Honor noted on the very first day of the
16 case, it was pretty clear that this was an orchestrated filing
17 in Peru, and that this debtor, even though it's probably not
18 insolvent, from everything we can tell, is not going to fight
19 those Peruvian insolvency proceedings, let them stay in place,
20 and we feel that's being done for strategic reasons.

21 With a trustee in place, the trustee could evaluate
22 that. And if the trustee came to us and said, look, guys, I've
23 looked at this, and I think that maybe it should stay in the
24 Peruvian proceedings, certainly, we would have to listen to
25 that and work with the trustee on that. But we would have the

1 kind of independents telling us that, that this case has
2 lacked, and that these very filings were designed to take away.
3 Remember, we had a CRO under the undertakings.

4 We had forensic accountants. They're all gone. And
5 so, you know, without the governance changes in place that
6 existed under the undertakings, you know, in our view, we're
7 many, many steps behind where we are now.

8 We have a family that controls these businesses, who
9 we perceive are making the decisions. There's been no
10 governance changes as a result of the Chapter 11 filing at any
11 level. And so we have concerns that we're not being given the
12 straight strategy scope here. And a trustee, obviously, would
13 be independent and would make his own decisions, and we would
14 have to deal with him or her. But we would be prepared to do
15 so, and that would be the type of independence that we seek.

16 THE COURT: All right.

17 MR. KLEINBERG: If I may respond, Your Honor?

18 THE COURT: Sure.

19 MR. KLEINBERG: A number of points.

20 First of all, it sounded to me like Mr. Martin's
21 presentation started to slide from the best interests of
22 creditors, which was his proposal for an expedited trustee
23 proceeding, more into the cause aspect of Section 1104 Trustee
24 because he is starting to talk about their concerns about
25 existing corporate governance, about existing management.

1 I don't want to argue with him about that. But I
2 think the so-called "streamlining" of the proposal that he's
3 made really is not going to hold water, and we are going to bog
4 down here with a three-, four-, five-, six-month trustee
5 litigation here.

6 I think it's an enormous waste of the estate's
7 resources and of everyone's time because --

8 THE COURT: Well, help me. When this started, I think
9 what I said the last time is that I just didn't understand why
10 you'd want to get started down the road in a case where you're
11 going to be fighting with people as to whether or not there
12 should be a trustee. It didn't strike me as a way to get any
13 deal done.

14 And I'm just -- there was a CRO. There were those --
15 that kind of independence; that was in place. On the eve of
16 the filing, or maybe as a result of the filing -- I'm not sure
17 how it all goes -- all of that is gone. Why can't -- and look,
18 if this is going to have to get litigated, it will get
19 litigated, and we'll deal with it. But I just -- I'm at a loss
20 to understand why we're not able to find some middle ground to
21 get somebody with independence in there, and to look at this
22 stuff. And as Mr. Martin said, if they look at it and say, you
23 know, the proceeding ought to be the proceeding, then that's
24 the end of it. I'm just -- I'm --

25 MR. KLEINBERG: Well, I'd like to --

1 THE COURT: I'm struggling here.

2 MR. KLEINBERG: I'd like to help Your Honor understand
3 that because I think there is a difference. We, the debtors,
4 have proposed and accepted, in broad terms, the lenders'
5 proposals for all of those types of protections for the
6 lenders, that would provide transparency and financial
7 reporting.

8 So, for example, the CRO, who was in place in Hong
9 Kong prior to the commencement of these cases, was an
10 individual by the name of Paul Brough, B-r-o-u-g-h. He was put
11 in place by HSBC Bank, which is one of the club lenders, but
12 not part of the group that DLA Piper is here representing
13 today. Mr. Brough resigned his position, in part, we
14 understand because of the Chapter 11 filings, but in part,
15 because of his frustration with the directions he was getting
16 from HSBC.

17 Be that as it may, one of the proposals that the
18 lenders made to us was to reinstall Mr. Brough as CRO. That's
19 acceptable, you know, in broad terms, to us. No one has spoken
20 to him about it, so it has to be vetted with him, of course.

21 We also proposed an alternative name for a CRO. The
22 lenders came back and said, well, we'd rather have Brough. We
23 said okay. We have --

24 THE COURT: Hold on. You know what I want to do? I
25 want to take a recess. I would ask that we -- I'd like to talk

1 to you folks across the hall, and take a few minutes and
2 discuss this.

3 MR. KLEINBERG: Certainly.

4 THE COURT: All right. And you know, anyone who wants
5 to be in it, you're welcome to join. Give me a few minutes,
6 and I'll be over to see you.

7 (Recess taken at 2:59 p.m.)

8 (Proceedings resume at 3:53 p.m.)

9 (Call to order of the Court)

10 THE COURT: Be seated, please.

11 All right. First, thank you very much for taking the
12 time to caucus off the record. I think we had a very
13 productive discussion.

14 What we're going to do is we're going to adjourn this
15 hearing until Monday the 25th at two o'clock. At that time,
16 the parties will report back to the Court on the progress made
17 in attempting to resolve the open disputed items.

18 If the parties are able to do that, we'll be going in
19 one direction; if not, there will be -- I'll be presenting with
20 a scheduling order, which will have been negotiated and, to the
21 greatest extent possible, agreed prior to coming here on the
22 25th. And that scheduling order will address the timing on the
23 motion for the appointment of a trustee.

24 Does anyone have any questions or comments on that?

25 (No verbal response)

1 THE COURT: Good. Thank you all very much. Thank
2 you.

3 COUNSEL: Thank you, Your Honor. Thank you, Your
4 Honor. Thank you. Appreciate it.

5 (Proceedings concluded at 3:55 p.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in the
above-entitled matter to the best of my knowledge and ability.

5

Coleen Land

July 20, 2016

9 Coleen Rand, AAERT Cert. No. 341

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